

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO.: 10-00056-RJS

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZVI GOFFER,

Defendants.

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SENTENCING MEMORANDUM

I. Guideline Calculation

**A. Objection to Paragraphs 40, 54, 62, 92,
Relating to Profits from Hilton and Kronos**

In paragraph 37 Probation correctly points out that Gautham Shankar did not tell Zvi Goffer the source of the Hilton and Kronos tips. Although the government relied on some evidence relating to the Hilton and Kronos trades in proving the conspiracy count, Zvi Goffer was not convicted in any substantive counts relating to the Hilton and Kronos tips. Since the government never proved that the Hilton/Kronos tips were *in fact* based on insider information they should not be used in calculating the profit.

In Paragraph 38, Probation calculates the profits from the Hilton/Kronos tips as follows:

	Kronos	Hilton	Total
Zvi Goffer	\$156,370	\$354,612	\$510,982
Mr. Drimal	\$950,117	\$4,292,653	\$5,242,770
E. Goffer	\$352,681	\$1,671,129	\$2,023,810
Mr. Kimelman	\$17,751	\$213,316	\$231,067
Combined			\$8,008,629

Since Zvi Goffer passed the Hilton/Kronos tips to Drimal, Emanuel Goffer and Kimelman, probation is holding Zvi Goffer responsible for everyone's Hilton/Kronos gains for a total of \$8,008, 629.

If the Court were to exclude the Hilton/Kronos totals from Zvi Goffer's "Total Profit" and only include the trades which were based on the proven Ropes and Gray information, the total would be \$12,448,005 minus \$8,008,629 for a total of \$4,439,376. The net effect of this re-calculation is that Zvi Goffer's "Specific Offense Characteristics" offense level found in paragraph 54 would be decrease by two levels to 18, pursuant to 2B1.1(b)(1)(K) and 2B1.4(b)(1). Goffer's Total Offense Level in paragraph 62 would then be 30 and his advisory guideline range found in paragraph 92 would be 97-121 months.

II. Request for §3553 Variance

Zvi Goffer hereby requests that his honorable Court sentence him below the advisory guideline range of 121-151 months in prison and states as follows:

A. Introduction

Zvi Goffer was 31 years old and an employee of The Schottenfeld Group LLC (Schottenfeld) and The Galleon Group (Galleon) when he committed these offense. The illegal activity took place over an approximately one year period from August 2007 until his employment at Galleon was terminated in August of 2008.

By September of 2008, Zvi Goffer's criminal activity had completely ceased. The youthful, impulsive and reckless Zvi Goffer who spent every waking moment trying to impress men like David Slaine, Craig Drimal and Raj Rajaratnam gave way to the more mature man who opened his own trading firm called Incremental Capital. No illegal activity ever took place at Incremental Capital.

More importantly, by late 2008 Zvi Goffer began to take his role as a father more seriously. By the time Zvi Goffer was running Incremental, his son Aaron was just about one year old and Zvi was becoming much more involved in Aaron's life. As adulthood finally began to take root, Zvi's behavior's changed. His criminal conduct ended. The impulsiveness and recklessness gave way to much more mature way of looking at life. The reason that the government never discovered any illegal activity at Incremental was because Zvi Goffer had left that type of behavior behind. Zvi Goffer was no longer an employee trying to impress his bosses. Now he was the boss and he ran Incremental Capital in a completely lawful and ethical way.

Zvi Goffer's second son, Ethan, was born about two years ago. It is not an exaggeration to say that Zvi's two sons have changed his life in some very significant ways. The man who now comes before this Court for his sentencing is not the same person who violated the law in such a flagrant way over three years ago. As his letter to the Court demonstrates, the Zvi Goffer of today is a much different person from the Zvi Goffer who was recorded by the FBI back in 2007 and 2008 during its investigation.

In her letter to the Court, Zvi's wife Dana describes a much more mature Zvi Goffer taking care of his son Aaron:

"Around the same time of Zvi's arrest we also found out from our pediatrician that Aaron was not developing at the rate he should be and we began the evaluation process through the Early Intervention Program...Zvi has been a huge part of Aarons development especially the past 18 months. While the arrest has been a curse it was also a blessing because Zvi has devoted almost all of his energy to spending time with the boys he loves so deeply." (Exhibit A)

In his letter to the Court, Mr. Goffer discusses what his life has been like since he was arrested for his crimes. His professional life has been completely and totally obliterated. Not only has Zvi Goffer lost every penny of any ill gotten gains, he has lost every legitimate penny he ever made at Incremental Capital. He has had to move his family into his father-in-laws house because he and his wife can not afford a place of their own.

His downfall has not been limited to his finances. Despite trying to "stay strong" for his wife and children, Zvi Goffer's emotional well being has been devastated. After his arrest, his personal financial collapse and the closing of Incremental Capital, Zvi

slipped into a severe depression. He began drinking more heavily. Thankfully, he sought out help and is now under the care of a Clinical Psychologist.

Dr. Trubowitz has diagnosed Zvi Goffer as suffering from depression and alcoholism. (Exhibit B) As part of his treatment, Zvi Goffer has spent the past year coming to terms to what he did to himself and his family. His letter to the Court is evidence of someone who is clearly trying to recover from the devastation he brought upon himself.

The arrogant swagger of 2007 and been replaced with an honest humility in 2011. Today, Zvi Goffer is a truly remorseful and humbled man. He is also a man who realizes that actions have consequences. He accepts the fact that he is going to be sentenced to prison for a very significant amount of time and he realizes that he has no one to blame but himself.

B. Mr. Goffer's Statement to The Court

Dear Judge Sullivan:

I am not writing this letter in order to ask this court for leniency. I understand and accept the fact that I am going to prison because of the crimes I have committed. The reason I am writing this letter is because I want to begin making amends for my wrong doings. I realize of course that writing this letter is just a first step in this process and I accept that fully. I know that my path ahead is going to be very difficult and I am preparing for that journey as best I can. In the meantime I want to inform the court and the government of some of my recent decisions.

I have advised my attorney that I wish to waive my right to appeal the guilty verdict in my case. I am waiving my right to appeal for two important reasons. First, the verdict against me was just. I am guilty. I traded on inside information that I received from Jason Goldfarb and others and I passed that information on to my friends and colleagues. Second, I believe that I had a fair trial. I thought that the prosecutors presented their case in a honest, straight forward and fair way and that the court presided over the case in a fair, impartial and neutral manner.

I have also advised my attorneys that I want to resolve the two civil cases brought against me by the S.E.C. In doing so I will admit guilt, agree to repay all profits I realized trading on illegal inside information and I will consent to a life time revocation of my Series 7 license.

I do not take these decisions lightly. I was taught growing up to never back down from a fight. Even if you were going to get beat, you learned to stand up and fight. I am now beginning to realize however that the mind set that help me survive tough times growing up is not necessarily the same mind set I should be cultivating today. Watching my two sons grow up and the experience of going through this trial have taught me that there is more to life than trying to "beat" other people in any way that I can.

I have been agonizing over this case for quite sometime. Since my arrest I have been seeing a psychiatrist. Dr. Trubowitz has help me understand my actions and motives in a much clearer way. I feel as though I am really growing up and beginning to take responsibility for my actions. I now realize that my warped perceptions of "survival of the fittest" and "everyone is doing it" were just poor excuses to keep me in denial about the wrongness of my own actions.

When I got into the business of trading stocks I was in my late twenties. I was a reckless and immature young man who thought the rules did not apply to me. My heroes were people like David Slaine, Craig Drimal and Raj Rajaratnam. Men who made millions of dollars in a "day's work." I wanted to be just like them and an erroneous lesson I learned early on was that in order to get ahead on Wall Street you had to be willing to "get an edge." And the truth is, I was all too eager to get that edge. I was willing to go to great lengths, even grossly illegal lengths, to get an edge. Pride and greed were my constant companions. I was lost.

After my arrest I was destroyed. In place of pride and greed my new constant companions were shame, self-loathing and depression. Virtually overnight I was financially ruined. I became a pariah to those who knew me. I started drinking heavily and taking anti-anxiety drugs just so I could make it through the day. The only thing that saved me was the love of my family.

My wife Dana has been incredibly supportive of me throughout this ordeal. I have also become much closer to my two sons. Aaron is now three years old and Ethan is two. (The one saving grace in all of this is the knowledge that I committed these crimes before they were born.) The thought of being away from them for so long brings me so much pain that I can hardly tolerate it. I can not explain the shame I feel realizing that my actions will be the cause of my wife having to raise our children on her own. I have no one to blame except myself. My hope, is that someday I will be able to explain to them what happened to me in a way that fortifies them against the same demons I succumbed to so easily.

And so, I stand before the Court today a humbled man who in many respects is not the same brash, reckless, irresponsible man who committed these crimes. I know and fully accept the fact that I will be imprisoned for a long time for what I have done. And rather than make empty promises about how I have learned my

lesson and will never commit a crime again, I would prefer to make a promise to my family that I will use this opportunity to become a better son, a better husband and a better father,

Sincerely,
/s/ Zvi Goffer

C. § 3553 Factors

Section 3553(a) directs the Court to impose a sentence that is “not greater than necessary” to (a) reflect the seriousness of the offense; (b) afford adequate deterrence to criminal conduct; (c) protect the public from further crimes of the defendant; and (d) provide correctional treatment in the most effective manner, 18 U.S.C. §3553. Each of the goals of these factors could be achieved with a sentence below the advisory guideline range.

1. Reflecting the Seriousness of the Offense

A sentence somewhere above five years but below the advisory guideline range of ten years in prison would still reflect the seriousness of the offense. Zvi Goffer’s professional, financial and personal lives have been completely and totally destroyed as a result of his actions. *Any* prison sentence will take Mr. Goffer away from his family. Even a prison sentence of five years will deprive Mr. Goffer from taking his two young sons to their first day of school. Every single day Zvi Goffer is locked up in a prison cell away from his children is going to be hell on earth for Mr. Goffer. This is especially true because Zvi Goffer has come to the realization that he will have no one to blame for his

predicament but himself. A sentence of five to six years in prison would mean that Zvi Goffer will spend the next two to three thousand days locked away somewhere separated from his family and friends. Taking a young father away from his family and locking him in a cell for a half dozen years would surely reflect the seriousness of this offence. In fact, a sentence of five to six years would be considered one of the most severe sentences handed down in an insider trading case in New York history. (See Exhibit C)

2. General Deterrence

A prison sentence in this case is warranted in order to satisfy the societal requirement of deterrence. The question for the Court is how much time in prison is “not greater than necessary.” Any sentence of imprisonment would have a deterrent effect and any sentence of imprisonment of more than five years would have a significant deterrent effect. The greatest deterrent effect however is probably found in the words of Zvi Goffer’s public letter to the Court. The personal devastation that Zvi Goffer describes should be enough to deter any sane person from making the same horrible decisions made by Zvi in 2007 and 2008.

3. Need to Protect the Public

There is zero chance that Zvi Goffer will ever commit another crime. Zvi Goffer is a first time offender who ended his criminal activity before he was ever arrested. As his many letters of support indicate he has lived an otherwise exemplary life. His psychologist indicates that with the help of treatment, Mr. Goffer has shown marked

progress and is “experiencing extreme remorse.” (Exhibit B) A lengthy prison sentence is simply not necessary to “protect the public from further crimes of the defendant.”

4. Need to Avoid Unwarranted Sentencing Disparity

Co-defendant Jason Goldfarb was an attorney and the conduit for all the Ropes and Gray tips and he received a sentence of 36 months. Co-defendant Arthur Cutillo was an attorney and the actual insider who breached his fiduciary obligations to his clients and he received a sentence of 30 months.

Admittedly Zvi Goffer’s offense conduct was more significant than that of Goldfarb and Cutillo. He went to trial, he solicited co-conspirators (without twisting any arms), initiated actions (the pre-paid phones) to avoid detection and initiated and organized the entire scheme. Of course the guidelines already take all of that into account.

A sentence of 30-37 months corresponds to an offense level of 19. If we added four levels for leader/organizer and an additional three levels for not accepting responsibility before trial, the offense level would be 26 which would result in a range of 63-78 months.

5. Nature and Circumstance of the Offense

Zvi Goffer is being held responsible for the trades of Emanuel Goffer, Craig Drimal and Michael Kimelman. There is no question that when calculating the gain resulting from the offense the gain should be based on the profit of the defendant and his co-conspirators. However when determining a sentence under §3553, the Court

may want to consider the harsh effect this application of the advisory guidelines has on Zvi Goffer's advisory guideline sentence.

Probation's calculation of \$12, 448,005 includes all profits of all Ropes and Gray and all the Hilton/Kronos trades involving all co-conspirators. As pointed out above, the total profits of all co-conspirators excluding the Hilton/Kronos trades would be \$8,008,629.

Zvi Goffer's "personal" trades were significantly less. According to probation, Zvi Goffer's personal profits were \$1,518,091. This is based on \$ 378,608 from 3COM, zero dollars from Axcan, \$1,003,323 from Clear Chanel, \$354,612 from Hilton, and \$156,370 from Kronos.

	Total	Enhancement	Total	Range
Everyone, All Trades	12,448,005	+20	32	121-151
Everyone, Including Hilton/Kronos	8,008,629	+18	30	97-121
Zvi Goffer Alone	1,892,593	+16	28	78-97
Zvi Goffer Alone Excluding Hilton/Kronos	1,381,931	+16	28	78-97

Finally it should be pointed out that even Zvi Goffer's "personal" profits were not really his own. He never traded in a personal account. All of Zvi Goffer's trades were made in the accounts of either Schottenfeld or Galleon.

Conclusion

For the reasons explained above, Zvi Goffer is requesting a variance from the advisory guideline range.

Respectfully submitted,

/s/William R. Barzee
William R. Barzee, ESQ.
Fla. Bar No. 0158720
Barzee Flores, P.A.
Courthouse Center
40 N.W. Third Street, PH 1
Miami, FL 33128
Tel: (305) 374-3998
Fax: (305) 374-3985
WilliamBarzee@BarzeeFlores.com

CERTIFICATE OF SERVICE

I HEREBY certify that on August 31, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.